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- c) moving along the player selected path according to chance;
- d) awarding the player monetary or credit values as wins or losses associated with the selected path, and
- e) controlling the overall house advantage of the casino game of chance within a predetermined range by relating the random frequency of the bonus game to the probability of landing on each position and the value of each position.

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32) (Twice amended.) A casino game of chance for at least one player comprising:

- a) a game surface accessible and visible to the player in the casino;
- b) a plurality of paths on the game surface arranged for player selection of one path, each path having at least two positions beginning at start position, and finishing at end position;
- c) movable indicia on the game surface, the movable indicia for showing the position on the selected path of the player;
- d) a mechanism of chance carried on the game surface and available to the player in the casino, the mechanism of chance for determining movement along the player selected path and awarding the player monetary or credit values associated as wins or losses with positions along the selected path, and
- e) structure in the casino game of chance to control the house advantage to a predetermined range by relating the random frequency of the bonus game to the probability of landing on each position and the value of each position so that the expected monetary or credit value of each of the plurality of paths is approximately identical.

REMARKS

The Examiner has rejected claims 1 to 32 under 35 USC 103(a) on Walker in view of Harris in an action dated January 10, 2001 with until April 10, 2001 to reply.

With regard to the matters of form raised by the Examiner the Applicant has submitted a substitute application in the preferred form.

Claims 1 to 7, 9 to 12, 14 to 25, 27 to 32 are rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Harris.

The Examiner states,

"Walker discloses a plurality of squares (see Figure1). He teaches establishing a random means of traversing the path while awarding the player the values associated with the squares landed thereon (see column 10, lines 35 to 40 and 64 to 66)."

"Walker lacks specifying: (a) a plurality of paths, (b) allowing a player select one of the paths, (c) each path having a start and an end positions, and (d) the overall house advantage is controlled. The functional recitations, the intended use of the game as a base game or bonus game, have not been given patentable weight since prior art shows the structural limitations and these limitations are not limited to one method of play."

"Harris discloses a game employing a plurality of intersecting paths (see Figure 1). The player, when meeting a certain requirement, is also allowed to select a given path (see column 6, lines 33 to 37)."

"Walker defines a path that inherently has two ends (see Figure 1, numerals 101 and 144). He claimed a path that has a general racetrack shape (see column 11, lines 53 and 54). He also teaches that the shape of the path as depicted in Figure 1 can be changed and the path can have greater or lesser number of boxes (see column 10, lines 58 to 61)."

Applicant has amended the independent claims 1, 12, 17 and 32. The term square or squares in claims 1, 2, 8, 9 and 11 has been replaced by position or positions, respectively as these claims are method claims the general term position is more appropriate. All the independent claims now have in the preamble casino games of chance for money and independent claims 1, 12 and 17 positively recite the method of controlling the overall house advantage of the

casino game of chance within a predetermined range by relating the random frequency of the bonus game to the probability of landing on each position and the value of each position and that is a step not in the cited references. The independent apparatus claim 32 recites the game surface paths having approximately identical monetary or credit values and the game of chance with structure in the casino game of chance to control the house advantage to a predetermined range by relating the random frequency of the bonus game to the probability of landing on each position and the value of each position.

The Examiner has said that Walker lacks specifying the overall house advantage is controlled and argues that given the structure of the Walker device the Applicant's method of play is possible. Applicant does not agree. Walker is not a casino game and so there is no reason to even consider the house advantage. Thus, not motivation to play according to Applicant's claimed method.

The commercial viability and regulatory approval of casino games of chance demand a calculable house advantage in order to comply with the verifiable minimum return to the player for the particular jurisdiction. For example, in Nevada the game manufacture must be able to show that the device is able to return at least 75 percent of the wager. In fact most machines are set to return significantly more as players and competition require minimum pay back in the 90 percent range. In Minnesota there is a ceiling of 95 percent over which the casino games must not pay out. There are either ceilings, floors or both in most jurisdictions. Meeting all the various regulations presents considerable challenges to the inventor of casino games with choices such as now disclosed and claimed.

Until the present disclosure no one suggested the claimed method and apparatus. It is surprising and unexpected that the house advantage can be maintained within a predetermined range for the claimed casino game. To provide the player multiple choices and meet the range of regulated payback is

not obvious. Players like to have choices and casinos wish to provide variety and regulators want to control the pay back; the present disclosure relates how to meet these seemingly different limitations. In particular, the players want to be able to make strategic choices which give them a feeling of control over the play of the game and thus maximize their opportunity to win and minimize their potential to lose. The Applicant has developed and now claims casino methods and apparatus that allow players' choice, assures house advantage and has a calculable return to satisfy regulators.

Harris et al. is not a casino game and so the issues of regulatory approval and casino house advantage are not taught. The Examiner cites Harris et al. saying that it supplies what is missing in Walker but only with regard to multiple paths. Applicant's amended claims recited expected value of different paths related to each other so that their expected value provides a house advantage in a predetermined range. The pending independent claims include the limitation and thus all the dependent claims also include that aspect which makes Applicant's method and apparatus a viable casino game.

The multiple paths of Harris et al. lend variety to the main path providing detours to other games. Nothing in the set up or play of the multiple paths of Harris et al. is at all similar or suggestive of Applicant's multiple paths. Specifically, Applicant's disclosed and claimed multiple paths give the players choices that have, as far as the casino is concerned, similar expected value. There is no choice in Harris et al. see column 6, lines 29 to 37 wherein the idea of player choice is disavowed. Thus, Applicant's claimed invention is not taught in Harris et al. and no combination with Walker would have rendered obvious Applicant's claimed method of game play.

Walker according to the Examiner defines a path that inherently has two ends (see Figure 1, numerals 101 and 144). He claimed a path that has a general racetrack shape (see column 11, lines 53 and 54). He also teaches that the

shape of the path as depicted in Figure 1 can be changed and the path can have greater or lesser number of boxes (see column 10, lines 58 to 61).

The Examiner concludes, as follows:

"Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker in view of Harris by adding additional path with more options given to the players for playing a more challenging game."

"It is old and known in the game art of gambling, such as casino game, that the overall house advantages should be controlled for profitability. It is also old and known in casino gaming art to allow players to acquire items or privileges."

These conclusions of the Examiner are based on the Applicant's teachings because without them no combination of the references would have rendered obvious Applicant claims to the multiple paths for the player to choose and having controlled expected values. In particular, failures in Walker's and Harris et al. disclosures are noted. More importantly, the Examiner has no reference that tells how to control the house advantage to a predetermined range even though that is necessary to make a commercially viable product that can pass regulatory approval.

The Examiner is correct in the view that the random chance devices are known by not with the methods of the independent claims from which these alternatives depend. Examiner says,

"Regarding claims 3 - 7 and 21 - 25: Walker discloses that dice can be used as a random chance device (see column 10, lines 64 - 66). It is old and known in the game art that spinning a spinner, rotating a wheel, flipping a coin and using random number generator are equivalent means of chance devices. It has been held that mere duplication of the essential working parts of a device

involves only routine skill in the art. [St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.]”

“Regarding claims 9, 14 and 27: Walker discloses certain squares causing additional movement (see column 3, lines 61 to 65).”

Perhaps so but again these are dependent claims limited indirectly to a predetermined house advantage based on paths, probabilities and value(s) won.

The Examiner states,

“Regarding claims 11, 16 and 29: Walker discloses establishing squares having associated games (see column 3, lines 36 to 49).”

Also the independent claims from which these dependent claims depend are patentable so also are these claims.

The Examiner adds the teaching of another reference to reject three more of Applicant's dependent claims saying,

“Claims 8, 13, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art, as applied to claims 1, 12 and 17 above, and further in view of Wilkins.”

“Walker as modified above meets the claimed invention except specifying a “stop” position.”

“Wilkins discloses a marked action space that has no effect equivalent to a “stop” position (see Figure 1, numeral 20).”

“Moreover, Walker teaches the use of cards to effect no gaming action by losing a turn to other player (see column 5, line 55).”

The Examiner's conclusion is based on the combination of two casino like games that have no real wagering, expected value or house advantage. Applicant believes that the application of such patent teachings must fail because (in

addition to the reasons expressed) there is a total lack of disclosure of Applicant's claimed limitations directed to casino games of chance.

Of the references of record only Olliges has a casino game, a slot machine, with the possibility of the player pre-selecting the winning symbols. While this allows choice, the game remains randomized and predetermined as regards wins and pay off. No teaching or mention of the house advantage proves that Applicant's claimed concept is unique even in a patent directed to a casino game. In Olliges the player selected symbols win if the determination is that a win is to be and the random operation assures only that the symbols that come up during play vary. So one would have to conclude that the Applicant's amended claims would not have been rendered obvious by any combination of the cited or of record references.

Reconsideration and prompt allowance of the amended claims is earnest solicited and respectfully requested. Should there remain any questions the Examiner is asked to call the undersigned, (702) 263-1613.

On behalf of the Applicant by his attorney,

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